

TO: James L. App, City Manager
FROM: Doug Monn, Director of Public Works
SUBJECT: Reimbursement for Sewer Line
2121 Spring Street, Scolari
DATE: April 17, 2007

Needs: That the City Council authorize reimbursement to Joe Scolari for replacement of an existing sewer line in accordance with a sewer reimbursement agreement.

- Facts:**
1. At their meeting of September 19, 2006, the City Council authorized the Mayor to enter into an agreement outlining the terms of reimbursement to Joe Scolari for reconstruction of an existing sewer line over his property at 2121 Spring Street.
 2. The new sewer line replaces an existing deteriorated sewer that, in addition to Scolari, serves eight other properties to the north.
 3. Scolari's representatives have provided documentation outlining his costs for construction of the new sewer line.
 4. The Sewer Agreement establishes the percentage share of Scolari's use of the new sewer line.

**Analysis
and**

Conclusion: The sewer line and appurtenances constructed by Joe Scolari benefit the City by replacing an existing deteriorated sewer that was serving eight other properties to the north. Invoices and other materials submitted by Scolari's representatives have been reviewed by the City Engineer. Scolari's cost for the new sewer line is \$78,803.

In accordance with the Agreement between Scolari and the City, Scolari will be reimbursed 53 percent of the cost of design and construction of the sewer. Based upon the full cost of \$78,803, the amount of reimbursement shall be \$41,700.

Policy

Reference: Municipal Code Title 14, Section 14.080.07

Fiscal

Impact: A reimbursement of \$41,700 from Sewer Enterprise Funds.

RESOLUTION NO. 06-175

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PASO ROBLES
AUTHORIZING REIMBURSEMENT FOR THE CONSTRUCTION OF A SEWER LINE
AND APPURTENANCES (2121 SPRING STREET, SCOLARI)

WHEREAS, on July 20, 2006, the City Engineer approved a plan for the reconstruction of the City sewer line on the Scolari property at 2121 Spring Street, from 22nd Street to 21st Street; and

WHEREAS, in conjunction with redevelopment of his property, Joe Scolari will construct a sewer line and appurtenances described in "Exhibit A - Sewer Line Improvements" in order to provide sewer service to his development; and

WHEREAS, Joe Scolari has requested reimbursement from the City since the sewer line and appurtenances constructed by Scolari will replace an existing deteriorated sewer line that currently serves eight other properties north of the Scolari property. Therefore the sewer line and appurtenances qualify for reimbursement pursuant to Title 14, Section 14.08.070 M1b of the Municipal Code.

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

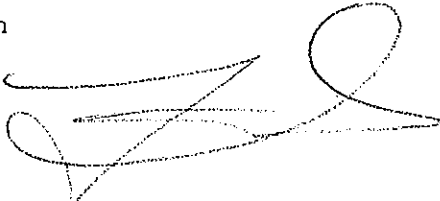
SECTION 1. Based on the staff report prepared by the City Engineer, the City Council finds as follows:

1. That the pro rata eligible amount of reimbursement to Joe Scolari is estimated to be \$50,000 based upon historical volumes of use by those connected to said sewer.
2. That the real properties identified in "Exhibit B - Served Properties", will be served by the new sewer line and appurtenances.

SECTION 2. That the City Council hereby approves and authorizes the Mayor to execute a Reimbursement Agreement in substantially the form attached hereto and incorporated herein by reference, subject to any minor technical and clarifying changes approved by the City Manager and City Attorney. The Reimbursement Agreement provides that city shall reimburse Joe Scolari approximately \$38,497 for the construction of a new sewer line and appurtenances which will serve eight existing residences north of the Scolari property.

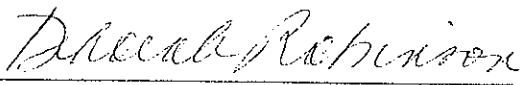
PASSED AND ADOPTED by the City Council of the City of Paso Robles this 19th day of September, 2006 by the following vote:

AYES: Nemeth, Picanco, Strong, and Mecham
NOES:
ABSTAIN:
ABSENT: Heggarty



Frank R. Mecham, Mayor

ATTEST:



Deborah D. Robinson, Deputy City Clerk

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

CITY ENGINEER

**COMMUNITY DEVELOPMENT DEPT.
CITY OF EL PASO DE ROBLES
1000 SPRING STREET
PASO ROBLES, CA 93446**

REIMBURSEMENT AGREEMENT

This Reimbursement Agreement (the "Agreement") is entered into this 19th day of September, 2006, by and between the City of El Paso de Robles, a California municipal corporation (the "City") and Joseph Gordon Scolari and Eldeen W. Scolari 1979 Revocable Trust (the "Developer"), an Owner, individually referred to herein as a "party" and collectively referred to as the "parties."

RECITALS

A. The Developer owns certain real property in the City, located at 2121 Spring Street, Paso Robles (the "Scolari Property"). Located on the property is a sanitary sewer line (the "Existing Sewer Line"). The Existing Sewer Line runs north to south across the Scolari Property. The Existing Sewer Line services eight (8) other properties north of the Scolari Property.

B. The Developer is redeveloping the Scolari Property. As a condition of approval of the redevelopment the Developer is required to install a new sewer line (the "New Sewer Line") to replace the Existing Sewer Line. The location of the New Sewer Line is shown on the map attached hereto as Exhibit A, incorporated herein by this reference. The New Sewer Line will serve the Scolari Property and the users of the Existing Sewer Line. The Existing Sewer Line will be abandoned.

C. The Developer will pay to design, construct and install the New Sewer Line. The City will reimburse the Developer for the costs associated with the New Sewer Line which exceed the costs attributable to the Developer's use of the New Sewer Line. The Developer will not be reimbursed for the costs of the New Sewer Line which are attributable to his use of the New Sewer Line. The exact amount the City will reimburse the Developer for costs associated with the New Sewer Line will be calculated after the New Sewer Line has been designed, constructed and installed. The reimbursement amount will be calculated in accordance with the provisions of this Agreement.

D. The Developer will dedicate the New Sewer Line to the City and will grant the City a non-exclusive, perpetual, easement through a portion of the Scolari Property for access to

purposes in the City, a copy of which is on file in the office of the City Engineer, and shall be made available for viewing to any interested party upon request.

6. Conditions of Reimbursement. The Developer hereby warrants that it has prepared and submitted plans and specifications for the New Sewer Line to the City for City's approval, and has secured, or will secure, any and all permits required by the City or any other governmental agency affected by construction of the New Sewer Line. The Developer shall, at its sole cost and expense, design, construct and install the New Sewer Line, described more fully in Section 2, above. All of the following are conditions which must be satisfied before the City will reimburse the Developer for any portion of the cost of the New Sewer Line:

6.1 All costs for design, construction, and installation of the New Sewer Line shall be fully paid by the Developer, and Developer shall obtain lien releases or waivers satisfactory to the City, before Developer shall be entitled to any reimbursement.

6.2 The New Sewer Line shall be completely installed, shall have received all necessary approvals, and shall be dedicated to the City before the Developer shall be entitled to any reimbursement.

6.3 The Developer shall have executed a Grant of Easement and the Grant of Easement shall have been duly recorded in the Official Records of the County of San Luis Obispo before Developer shall be entitled to any reimbursement.

The City shall reimburse the Developer for reasonable third-party costs actually expended by the Developer for the purpose of design, construction and installation of the New Sewer Line. The City shall not reimburse the Developer for unreasonable costs, as determined by the City, or costs which the Developer would not otherwise have incurred but for the negligence or willful misconduct of the Developer, the Developer's agents, officers, or employees, including contractors and subcontractors hired in connection with the design construction and installation of the New Sewer Line.

Notwithstanding any of the above, the Developer will not be reimbursed by the City for any costs related to the New Sewer Line unless the Developer pays prevailing wages for all work done in connection with the design, construction and installation of the New Sewer Line, as required by Section 5 of this Agreement and state law, and provides evidence, satisfactory to the City, of compliance with the Prevailing Wage Law.

7. Formula for Determining the Reimbursement Amount. It is the intent of the parties that the Developer will be reimbursed for the costs associated with design, construction and installation of the New Sewer Line which are attributable to use of the New Sewer Line by properties other than the Scolari Property. Based upon historical use the Developer will be reimbursed Fifty-three percent of his costs for design, construction and installation of the New Sewer Line, as set forth in Exhibit B.

proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of San Luis Obispo.

17. Authority to Enter into Agreement. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the City and the Developer.

18. Notices. Any notice or other communications to be given to either party under this Agreement shall be in writing, shall be delivered to the addresses set forth below, and shall be effective, as follows:

- (a) By personal delivery, effective upon receipt by the addressee;
- (b) By facsimile, effective upon receipt by the addressee, so long as a copy is provided by certified U.S. mail, return receipt requested, postmarked the same day as the facsimile;
- (c) By certified mail, return receipt requested, upon receipt of refusal.

CITY: City of Paso Robles
 Attn: City Engineer
 1000 Spring Street
 Paso Robles, CA 93446
 (tel.): (805) 237-3860
 (fax): (805) 237-3904

DEVELOPER: Joseph G. Scolari
 555 Five Cities Drive
 Pismo Beach, CA 93449
 (tel.): (805) 773-1113, ext.15
 (fax): (805) 773-1255

19. Attorneys' Fees and Costs. If either party to this Agreement brings a suit or proceeding to enforce or require performance of the terms of this Agreement, the prevailing party in such suit or proceeding shall be entitled to recover from the other party reasonable costs and expenses, including attorneys' fees, including outside counsel.

20. Successors. The terms, covenants, and conditions of this Agreement shall apply to, and shall bind, the heirs, successors, executors, administrators, assigns and subcontractors of both parties.

21. Severability. In the event any term of this Agreement is held invalid by a court of competent jurisdiction, or subsequently enacted legislation, the Agreement shall be construed as not containing that term, and the remainder of this Agreement shall remain in full force and effect.

RESOLUTION NO. 07-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PASO ROBLES
AUTHORIZING REIMBURSEMENT FOR THE CONSTRUCTION OF A SEWER LINE
AT 2121 SPRING STREET (SCOLARI)

WHEREAS, pursuant to Resolution No. 06-175, the City Council authorized the Mayor to enter into a Reimbursement Agreement with Joe Scolari for the installation of an eight-inch sewer line in an easement on the Scolari property, from 22nd Street to 21st Street; and

WHEREAS, in conjunction with the re-development of his grocery store, Joe Scolari has constructed the eight-inch sewer line at a cost of \$78,803; and

WHEREAS, Joe Scolari has requested reimbursement from the City in accordance with said Agreement for 53 percent of the cost of construction of the sewer line, said request being \$41,700.

NOW, THEREFORE, BE IT RESOLVED, AS FOLLOWS:

SECTION 1. Based on the staff report prepared by the City Engineer, the City Council approves a one-time budget appropriation in the amount of \$41,700 from the City's Sewer Enterprise Fund to Budget Account No. 221-910-5452-786 to reimburse Joe Scolari for the installation of an eight-inch sewer line at 2121 Spring Street, extending between 22nd Street and 21st Street, based upon documentation provided by the Scolari's representatives.

PASSED AND ADOPTED by the City Council of the City of Paso Robles this 17th day of April, 2007 by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

Frank R. Mecham, Mayor

ATTEST:

Deborah D. Robinson, Deputy City Clerk